

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1183

Introduced by Assembly Member Bill Berryhill

February 18, 2011

~~An act to amend Section 25531 of, and to amend the heading of Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of, the Health and Safety Code, relating to hazardous substances. An act to add Section 21167.05 to the Public Resources Code, relating to the environment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1183, as amended, Bill Berryhill. ~~Hazardous substances: accidental release prevention. Environment: CEQA: environmental impact report: right of action.~~

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA confers standing on a person satisfying specified requirements to file and maintain an action or proceeding alleging that an EIR was not prepared and certified in compliance with CEQA.

This bill would enact the Jobs and Housing Act of 2011 and would limit the standing to file and maintain the above action or proceeding to the Attorney General. The bill would apply this limitation to those actions or proceedings that are pending as of January 1, 2012, and for which a final nonappealable judgment has not been entered before that date.

~~Existing law provides that the program for the prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to the federal Clean Air Act is the accidental release prevention program for the state.~~

~~This bill would provide that the provisions establishing the program are to be known as the “California Accidental Release Prevention Program” or “CalARP.”~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. This act shall be known and may be cited as the*
- 2 *Jobs and Housing Act of 2011.*
- 3 *SEC. 2. (a) The Legislature finds and declares all of the*
- 4 *following:*
- 5 *(1) The purposes of the California Environmental Quality Act*
- 6 *(Division 13 (commencing with Section 21000) of the Public*
- 7 *Resources Code) is to provide information to policymakers on the*
- 8 *impact of their decisions on the environment so they can minimize*
- 9 *or mitigate that impact. The underlying objective of the act is to*
- 10 *inform governmental decisions of the impact on the environment,*
- 11 *identify ways that the environmental damage can be avoided or*
- 12 *reduced, prevent avoidable damage in the design of the project,*
- 13 *and ensure that governmental agencies disclose information to*
- 14 *the public.*
- 15 *(2) Under the act, there is a lengthy environmental review*
- 16 *process, with many opportunities for anyone to raise concerns*
- 17 *about a particular project. The entire process of drafting and*
- 18 *obtaining certification for an environmental impact report (EIR)*
- 19 *can take years and cost thousands to several million dollars.*
- 20 *(3) The act of the certifying body with respect to a project is*
- 21 *discretionary and its decision reflects a policy choice informed by*
- 22 *environmental and other analyses.*

1 (4) California has lost hundreds of thousands of jobs in
2 construction, finance, real estate, and industries related to
3 construction since 2008. According to the Legislative Analyst's
4 Office, in construction alone, California has lost over 300,000
5 j o b s s i n c e 2 0 0 7 (s e e
6 http://lao.ca.gov/reports/2011/calfacts/calfacts_010511.pdf).

7 (5) As the real estate market begins to rebound from the depths
8 of the recession, major projects are being stalled and job creation
9 is being stifled by nonenvironmental abuses of the act, which allows
10 any person to challenge the certification of an EIR by a local
11 government simply by asserting the analysis is inadequate to meet
12 the requirements of the act, resulting in a proliferation of frivolous
13 claims and significant abuses for purposes unrelated to the
14 environmental intent of the act.

15 (6) Courts have typically stayed a project once an action is filed
16 challenging the certification of an EIR and it can take more than
17 five years and cost millions of additional dollars to fight the action.
18 During this time, projects are suspended and jobs are lost.

19 (7) It is therefore in California's interest to restructure the act
20 to mitigate its abuse for nonenvironmental purposes to better
21 position California to spur economic recovery, create more jobs,
22 especially in the state's decimated construction industry, and get
23 critical projects online faster to allow the state to better compete
24 in the global economy.

25 (b) In enacting this act, it is the intent of the Legislature to do
26 the following:

27 (1) Mitigate the potential for retaliatory lawsuits by competitors
28 or litigants seeking to gain an unfair advantage in unrelated
29 disputes.

30 (2) Mitigate the potential for "shakedown" lawsuits by
31 individuals seeking "go away" money, whereby the mere threat
32 of litigation is also used to leverage concessions that may be totally
33 unrelated to benefits to the environment.

34 (3) Mitigate the potential for abuse by providing that only the
35 Attorney General will have standing to challenge the certification
36 of an EIR.

37 (c) In enacting this act, it is not the intent of the Legislature to
38 do the following:

39 (1) Change the environmental review process.

1 (2) *Limit the power of local government to approve or reject*
2 *an EIR.*

3 (3) *Prevent the public from challenging an EIR through the*
4 *publicly elected Attorney General.*

5 SEC. 3. *Section 21167.05 is added to the Public Resources*
6 *Code, to read:*

7 21167.05. (a) *Notwithstanding any other law, a person, other*
8 *than the Attorney General, shall not commence or maintain an*
9 *action or proceeding alleging that an environmental impact report*
10 *does not comply with this division.*

11 (b) *This section shall apply to an action, proceeding, cause of*
12 *action, or claim that is pending as of January 1, 2012, and for*
13 *which a final nonappealable judgment has not been entered prior*
14 *to January 1, 2012.*

15 ~~SECTION 1. The heading of Article 2 (commencing with~~
16 ~~Section 25531) of Chapter 6.95 of Division 20 of the Health and~~
17 ~~Safety Code is amended to read:~~

18
19 ~~Article 2. California Accidental Release Prevention Program~~
20

21 ~~SEC. 2. Section 25531 of the Health and Safety Code is~~
22 ~~amended to read:~~

23 25531. (a) ~~The Legislature finds and declares that a significant~~
24 ~~number of chemical manufacturing and processing facilities~~
25 ~~generate, store, treat, handle, refine, process, and transport~~
26 ~~hazardous materials. The Legislature further finds and declares~~
27 ~~that, because of the nature and volume of chemicals handled at~~
28 ~~these facilities, some of those operations may represent a threat to~~
29 ~~public health and safety if chemicals are accidentally released.~~

30 (b) ~~The Legislature recognizes that the potential for explosions,~~
31 ~~fires, or releases of toxic chemicals into the environment exists.~~
32 ~~The protection of the public from uncontrolled releases or~~
33 ~~explosions of hazardous materials is of statewide concern.~~

34 (c) ~~There is an increasing capacity to both minimize and respond~~
35 ~~to releases of toxic air contaminants and hazardous materials once~~
36 ~~they occur, and to formulate efficient plans to evacuate citizens if~~
37 ~~these discharges or releases cannot be contained. However,~~
38 ~~programs designed to prevent these accidents are the most effective~~
39 ~~way to protect the community health and safety and the~~
40 ~~environment. These programs should anticipate the circumstances~~

1 that could result in their occurrence and require the taking of
2 necessary precautionary and preemptive actions, consistent with
3 the nature of the hazardous materials handled by the facility and
4 the surrounding environment.

5 (d) As required by Clean Air Act amendments enacted in 1990
6 (Public Law 101-549), the Environmental Protection Agency has
7 developed a program for the prevention of accidental releases of
8 regulated substances. In developing the program, the
9 Environmental Protection Agency thoroughly reviewed a wide
10 variety of chemical and hazardous substances to identify substances
11 that might pose a risk to public health or safety or to the
12 environment in the event of an accidental release. The
13 Environmental Protection Agency developed a program to prevent
14 accidental releases of those substances determined to potentially
15 pose the greatest risk of immediate harm to the public and the
16 environment. The federal program provides no options for
17 implementing agencies to diminish the requirements or
18 applicability of the federal program.

19 (e) In light of this new federal program, the Legislature finds
20 and declares that the goals of reducing regulated substances
21 accident risks and eliminating duplication of regulatory programs
22 can best be accomplished by implementing the federal risk
23 management program in the state, with certain amendments that
24 are specific to the state. Therefore, it is the intent of the Legislature
25 that the state seek and receive delegation of the federal program
26 for prevention of accidental releases of regulated substances
27 established pursuant to Section 112(r) of the federal Clean Air Act
28 (42 U.S.C. Sec. 7412(r)), by implementing the federal program as
29 promulgated by the Environmental Protection Agency, with certain
30 amendments that are specific to the state.

31 (f) This article, and the program for the prevention of accidental
32 releases for the state, as specified in Section 25533, shall be known;
33 and may be cited as the “California Accidental Release Prevention
34 Program” or “CalARP.”